

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Reinstatement of Revoked Certificate of:)

File No: 1B-2009-198057

STEVEN H. SAVRAN)

OAH No: 2009090438

Doctor of Podiatric Medicine)
License No. E-2891)

Respondent.)

DECISION AND ORDER

The attached Amended Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on February 24, 2010

IT IS SO ORDERED January 25, 2010

BOARD OF PODIATRIC MEDICINE



Karen L. Wrubel, D.P.M., President

BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Revoked Certificate of:

STEVEN SAVRAN, D.P.M.
1200 W. Ball Road
Anaheim, CA 92802

Former Podiatry License No. E-2891,

Petitioner.

Case No. 1B-2009-198057

OAH No. 2009090438

AMENDED PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on November 2, 2009.

Deputy Attorney General Douglas C.S. Lee appeared on behalf of the Attorney General's Office.

Steven Savran (petitioner) represented himself.

Oral and documentary evidence was presented and the matter was submitted on November 2, 2009.

The proposed decision was issued on December 1, 2009.

On December 7, 2009, the Office of Administrative Hearings received a request from the Enforcement Coordinator for the Board of Podiatric Medicine to correct an error in the Proposed Decision that issued on December 1, 2009. Based on the request, the record was reopened and the parties were notified that they could respond to the request "in writing no later than 5:00 p.m. December 23, 2009. . ." (December 9, 2009 Order from the Office of Administrative Hearings.) Neither party filed a response, and the matter was deemed submitted on December 24, 2009.

Upon review of the proposed decision it is apparent that the Enforcement Coordinator for the Board of Podiatric Medicine is correct in her observation that standard probation condition 40, requiring petitioner to pay probation monitoring costs, was inadvertently omitted from the order in the original proposed decision. Other than inclusion of that term of probation as condition 2 (o), this Amended Proposed Decision is identical to the Proposed Decision of December 1, 2009.

FACTUAL FINDINGS

License/Disciplinary History

1. On October 27, 1981, the Board of Podiatric Medicine (the board) issued Podiatry License number E-2891 to petitioner.
2. On May 10, 2001, petitioner pled guilty to and was convicted of the following criminal offenses: Two counts of violating California Health and Safety Code section 11368 (prescription forgeries); two counts of violating California Penal Code section 459-460(b) (second degree burglary); one count of violating California Penal Code section 550, subdivision (a)(7) (fraudulent claim for payment of a health care benefit); and one count of violating California Health and Safety Code section 11550 (under the influence of a controlled substance). Each of petitioner's criminal convictions was substantially related to the qualifications, functions and duties of a licentiate.
3. On July 11, 2001, an accusation was filed against petitioner in Case number 1B-2000-114388.
4. On July 17, 2001, petitioner was sentenced to five years of probation in the criminal matter. One of the terms and conditions of petitioner's criminal probation required petitioner to serve 240 days in county jail.
5. As a result of petitioner's incarceration his license was suspended for an indefinite period of time pursuant to California Business and Professions Code section 2236.1. The suspension became effective on August 21, 2001.
6. On July 9, 2002 a hearing was conducted concerning the July 11, 2001 accusation filed in Case number 1B-2000-114388. Additionally, petitioner's request, pursuant to Business and Professions Code section 2307, to lift his Business and Professions Code section 2236.1 license suspension was heard and considered.
7. On October 7, 2002, in Case number 1B-2000-114388, petitioner's license was revoked; however, the revocation was stayed and petitioner was placed on seven years probation under certain terms and conditions. Additionally, petitioner's

license suspension was ordered to be lifted upon petitioner's successful completion of the following terms and conditions: Completion of an intensive drug rehabilitation treatment program; completion of an ethics course; completion of an oral clinical examination; completion of a psychiatric evaluation; and obtaining and maintaining malpractice insurance as a precondition to practicing podiatry.

8. On December 11, 2003, an accusation and petition to revoke probation was filed against petitioner.

9. On December 1, 2005, petitioner's probation in Case number 1B-2000-114388 was revoked. Consequently, petitioner's license was revoked, and petitioner was ordered to pay investigation and prosecution costs in the amount of \$6,401.

Summary of the Factual Bases for Revocation of Petitioner's License

10. Petitioner has been an alcoholic and drug addict since 1983. He received counseling and stayed clean and sober from 1989 until 1999 when he relapsed due to marital problems. Petitioner was primarily addicted to vicodin, but he also used/abused fiorinal/codeine, dalmene and darvocet. Petitioner obtained drugs by fraudulently prescribing them for others, including fictitious individuals, by obtaining prescriptions from friends who were doctors, and on one occasion by forging another doctor's signature. In 2000, petitioner began combining his drug use with alcohol consumption and on October 10, 2000, a pharmacist at a Target retail store called the police when petitioner attempted to fill a fraudulent prescription. Petitioner was arrested and subsequently suffered the criminal convictions and disciplinary actions described in the preceding Factual Findings.

11. The revocation of petitioner's probation and his license resulted from the following unprofessional conduct and conduct in violation of the terms and conditions of his December 1, 2005 probation: Petitioner failed to timely notify his probation monitor in writing of his address changes; petitioner failed to timely undergo a psychiatric evaluation; petitioner failed to timely complete an ethics course; on July 8, 2003, petitioner tested positive for cocaine; petitioner failed to reimburse the board for the costs of drug testing; petitioner entered the Roque Rehabilitation Program without prior board approval; and petitioner failed the oral competency examination that he took on October 3, 2003.

12. The record of the September 30, 2005 administrative proceeding leading to petitioner's revocation contains the following observations in the Legal Conclusions sections of the decision:

"10. One subject to a felony conviction for drug abuse would make every effort to comply with the terms of his or her probation. [Petitioner], however, has demonstrated an arrogant, cavalier and insincere attitude about complying with the law and the terms of his

probation. For example, he was questioned on cross examination about whether he received mail while at the Roque Center. He responded that:

‘But when I got these letters at the Roque Center I was concentrating on my recovery and I couldn’t open all my mail.’

With respect to his failure to comply with one of the conditions of probation, he stated:

‘I tried to work out the details with Mr. [sic] Cleland and the Board wouldn’t budge on it, so I have not.’

11. Since being on probation, [petitioner] has exhibited a pattern of behavior filled with lies, purposeful evasion and noncompliance. He lied to the probation officers when he told them he was ‘clean and sober’ on July 8, 2003. In fact, he had been taking cocaine which was demonstrated when he tested positive for that substance based on a biological fluid sample obtained by the probation officers that very day. Rather than admit to his drug use, [petitioner] continued to lie by claiming the positive test result was due to his use of orajel for a toothache.

12. His pattern of prevarication or evasiveness continued up to the time of the administrative hearing conducted on July 13, 2004 which was part of the original revocation proceedings. In August 2003, [petitioner] filled out a form in which he indicated that he had used alcohol, but not drugs within the past year. This was only one month after he tested positive for cocaine. When asked on cross-examination why he had failed to indicate that he had used drugs, [petitioner] replied:

‘That’s because I’m basically an alcoholic.’

13. [Petitioner’s] noncompliance has not been the result of his financial difficulties. For example, financial problems cannot be used as an excuse for [petitioner’s] failure to notify the Board of his frequent address changes. Financial problems cannot explain his pattern of lies and evasions with respect to his use of drugs. Financial problems cannot explain [petitioner’s] failure to contact his probation officer before he enrolled in the Roque Center. Finally, financial problems are absolutely no excuse for [petitioner’s] use of cocaine in direct and knowing violation of the law and the terms of his probation. (Exhibit 3.)”

Factors in Mitigation and Evidence of Rehabilitation

13. Petitioner has a sobriety date of August 21, 2003, the date he entered the Roque 90-day intensive addiction treatment program. Petitioner picked a sponsor within two or three weeks after entering the program and still has that sponsor whom he calls daily. After leaving the Roque Center, petitioner began living in a sober living home. He has completed the 12-step recovery program and is very involved in Alcoholics Anonymous (AA). Petitioner currently acts as a sponsor for other recovering addicts.

14. Petitioner's disciplinary history reveals that his problems were directly related to his polysubstance addiction (cocaine and alcohol), an illness that fortunately did not adversely impact his patients (petitioner has no history of malpractice suits, or patient complaints).

15. In 2004, petitioner began managing a six-bedroom sober living home with a two resident per room capacity.

16. In 2005, petitioner passed his oral clinical examination.

17. Petitioner has maintained gainful employment, albeit "low end jobs," since his license was revoked. Petitioner has worked telemarketing jobs, manual labor jobs and has worked with the homeless. Currently, petitioner is managing a halfway house for parolees.

18. Petitioner has maintained his sobriety by developing a support system consisting of AA meetings, following his sponsor's advice, helping people and by reading the "Big Book of AA." Petitioner testified that he loves AA and loves his sobriety.

19. Petitioner met his current wife five and one-half years ago, and his wife has never seen petitioner sober or "high."

20. Petitioner wants to resume the practice of podiatry by practicing general podiatry in underserved areas of the community. Petitioner candidly admitted that he has not taken any continuing education courses since 2004 or 2005, and that he needs to be on probation and to repay the board the previously ordered cost recovery.

21. Petitioner was evaluated by Mohan Nair, M.D., an addiction specialist, in May of 2005. In the resulting June 9, 2005 Psychiatric/Chemical Dependency Examination report, Dr. Nair concluded:

"[Petitioner] is mentally competent to work as a podiatrist. [Petitioner] does not have a current psychiatric disorder or disability that would affect his ability to work as a podiatrist. He is not limited on

the basis of a psychiatric or chemical dependency problem for practicing as a podiatrist. (Exhibit 4.)”

As an addiction specialist, Dr. Nair recognized that relapse is part of recovery; a part one must continually monitor and guard against. Accordingly, Dr. Nair made the following recommendations to limit the likelihood of petitioner’s relapse:

“A) [Petitioner] is advised to attend a Diversion Program. This would be the same or similar to the Physician Diversion Program, which involves five years of monitoring and rehabilitation. Facets of the program involve [sic] attending groups with peers on a weekly basis and having a case manager who will communicate and get reports from his psychiatrist, psychotherapist, probation officer and employer/proctor. He will go through the proctoring process followed by the board. [Petitioner] should continue 12 step meetings at least twice a week on an ongoing basis. He needs to have a sponsor on an ongoing basis. Greater amount of meeting attendance may be required during periods of uncertainty and stress (legal/professional/child-family related).

B) He should be under the care of an addiction medicine specialist. Medications such as ReVia may be helpful in decreasing cravings. The addiction specialist should also do random testing and report to the board during the probationary period.

There is no guarantee that [petitioner] will not relapse again; following a program lessens the risk and allows us to gauge motivation. Addicts who follow a strict program are less likely to relapse and will have earlier return to abstinence and functioning. (Exhibit 4.)”

LEGAL CONCLUSIONS

Based upon the foregoing Factual Findings, the Administrative Law Judge makes the following Conclusions:

1. Title 16, California Code of Regulations, section 1657, lists the criteria for rehabilitation to be examined in evaluating the merits of a petition for reinstatement of a revoked license. Section 1657 provides:

“When considering a petition for reinstatement or a petition for modification of penalty, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, may consider all activities of the petitioner since the disciplinary action was taken and shall also consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) for which the petitioner was disciplined;
- (2) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) for which the petitioner was disciplined which could also be considered as grounds for denial under Code section 480;
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) above;
- (4) The extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed;
- (5) Petitioner's activity during the time the certificate was in good standing;
- (6) Evidence, if any, of rehabilitation submitted by the petitioner; and,
- (7) Petitioner's professional ability and general reputation for truth.

(See also, Bus. & Prof. Code, § 2307.)

Petitioner has the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden requires that he show that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.) The factors, as set forth in Findings 13 through 21, reveal that petitioner has met his burden with regard to his sobriety; however, the question of his current competency/fitness to resume practice remains. Consequently, as a condition precedent to reinstatement of his license, petitioner will be required to participate in, and complete, the University of California, San Diego Medical Center Physician Assessment and Clinical Education (PACE) Program, or a board approved equivalent program designed to assess whether petitioner has the current knowledge and skills to safely resume the practice of podiatry. Once the PACE program, or equivalent program, has certified that petitioner is competent to commence practice his license will be reinstated; however, the license will be revoked and petitioner will be placed on probation for five years (to give him over ten years of sobriety) under terms and conditions designed to help him remain clean and sober and to allow the board to monitor his sobriety.

2. In view of petitioner's history of low paying jobs and the fact that he will be faced with the costs associated with the PACE program, it is concluded that petitioner lacks the ability to pay the previously ordered cost recovery.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The previous cost recovery order is stricken. Petitioner is relieved of his obligation to pay the previously ordered cost recovery amount.

2. Petitioner's Petition for Penalty Relief/Reinstatement, to the extent it seeks a non-probationary license, is denied. However, upon proof of successful completion of the PACE, or board approved equivalent, program and certification by the program that petitioner is competent to resume practice, petitioner's former Podiatry License, license number E-2891, shall be reinstated. The reinstated license shall be immediately revoked, the revocation shall be stayed, and petitioner shall be placed on probation for five (5) years under the following terms and conditions:

a) Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

b) Petitioner shall abstain completely from the use of products or beverages containing alcohol.

c) Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon the request of the Board or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the petitioner. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

d) Within 30 days of the date petitioner is placed on probation, petitioner shall submit to the BPM for its prior approval a rehabilitation monitoring program. When evaluating programs for approval, the following will be taken into consideration: Unless specifically noted in the decision, the minimum length of the program shall be no less than three years. All plans must include face to face monitoring, random biological fluid testing, and an educational program that addresses disease concepts, recovery process and recovery oriented lifestyle changes.

Within 30 days of approval of said program, petitioner shall enroll and participate until the BPM or its designee determines that further monitoring and rehabilitation is

no longer necessary. If it is determined by both the rehabilitation program and a BPM designated physician that petitioner cannot practice podiatric medicine safely, the petitioner shall immediately cease practice upon notification. Petitioner may not resume practice until it has been determined by both the rehabilitation program and a BPM designated physician that petitioner can safely practice podiatric medicine and has been notified in writing by the board's designee. Failure to cooperate or comply with the Rehabilitation Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.

e) Prior to engaging in the practice of medicine the petitioner shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of podiatric medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Division or its designee within 15 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

f) Prior to receiving assistance from a physician assistant, petitioner must notify the supervising physician of the terms and conditions of his/her probation.

g) Petitioner shall obey all federal, state and local laws, all rules governing the practice of podiatric medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

h) Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit quarterly declarations not later than ten calendar days after the end of the preceding quarter.

i) Petitioner shall comply with the Board's probation unit. Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Petitioner shall not engage in the practice of podiatric medicine in petitioner's place of residence.

Petitioner shall maintain a current and renewed California doctor of podiatric medicine's license.

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

j) Petitioner shall be available in person for interviews either at petitioner's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without notice throughout the term of probation.

k) In the event petitioner should leave the State of California to reside or to practice, petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside, will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Law; Probation Unit Compliance; and Cost Recovery.

Petitioner's license shall be automatically cancelled if petitioner's periods of temporary or permanent residence or practice outside California totals two years. However, petitioner's license shall not be cancelled as long as petitioner is residing and practicing podiatric medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

l) In the event the petitioner resides in the State of California and for any reason petitioner stops practicing podiatric medicine in California, petitioner shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve petitioner of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which petitioner is not engaging in any activities defined in section 2472 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Petitioner's license shall be automatically cancelled if petitioner resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code section 2472.


m) Petitioner shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate will be fully restored.

n) Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

o) Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Board of Podiatric Medicine and delivered to the Board or its designee within 60 days after the start of the new fiscal year. Failure to pay costs within 30 calendar days of this date is a violation of probation.

Proposed Decision Dated: December 1, 2009

Amended Proposed Decision Dated: January 5, 2010

A handwritten signature in black ink, appearing to read 'Roy W. Hewitt', with a stylized flourish extending to the right.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings